



0000005551

Timothy M. Hogan (004567)
 ARIZONA CENTER FOR LAW
 IN THE PUBLIC INTEREST
 202 E. McDowell Rd., Suite 153
 PHOENIX, ARIZONA 85004
 (602) 258-8850

RL

2000 NOV 16 P 12:16

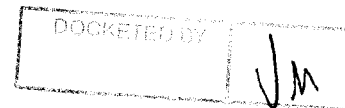
AZ CORP COMMISSION
DOCUMENT CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

In the matter of the Application of) Case No. 101
 MESQUITE POWER LLC, or their assignee(s),)
 in conformance with the requirements of Arizona) Docket No. L-00000S-00-0101
 Revised Statutes § 40-360.01 *et seq.*, for a)
 Certificate of Environmental Compatibility)
 authorizing the construction of a natural gas-fired, -)
 combined cycle generating facility located south)
 of Elliot Road, approximately 37 miles west of the)
 Phoenix metropolitan area, near Arlington in)
 Maricopa County, Arizona)

**RESPONSE TO MOTION
 TO DISMISS**

NOV 16 2000



The Arizona Center for Law in the Public Interest ("Center") responds to the Motion to Dismiss Untimely Request for Review filed by Mesquite Power, LLC ("Mesquite") and requests that it be denied in the event the Commission fails to accept the stipulation that has been submitted by the Center and Mesquite. If the stipulation is accepted then the issue is moot because the Center's Request for Review and Mesquite's Motion to Dismiss are deemed to be withdrawn by the parties.

The Motion to Dismiss filed by Mesquite asserts that the Siting Committee rendered its written decision in this matter on October 10, 2000 and that the Center did not file its Request for Review until October 30, 2000, twenty days later. As it turns out, Mesquite is correct but the Center's failure to file its Request for Review within 15 days is justified under the circumstances of this case.

1 Counsel for the Center attended the last day of hearing conducted in this case on October
2 10, 2000. At the conclusion of the hearing, the Chairman indicated that he would be issuing the
3 Certificate the following day. See Transcript, Vol. III at 459 attached as Exhibit A. The Center
4 did not receive a copy of the Certificate until October 18, 2000, more than a week later. The
5 cover memo from the Utilities Division transmitting the Certificate of Environmental
6 Compatibility is dated October 17, 2000. The Certificate itself is less than clear about whether
7 the date shown is October 10th or October 16th. Based on the actual receipt of the Certificate on
8 October 18th and the transmittal memo dated October 17th, as well as the fact that the Chairman
9 indicated that the Certificate would not be issued until at least the day following October 10th,
10 counsel for the Center reasonably assumed that the Certificate was issued on October 16th and
11 not October 10th. If the Certificate had been issued on October 16th as the circumstances seemed
12 to indicate, the Request for Review filed by the Center on October 30th would be timely.

14 Mesquite claims that the fifteen-day period in which to request a review of the
15 Committee's decision by the Commission is jurisdictional. However, Mesquite fails to cite any
16 authority whatsoever for that proposition. Certainly the statute itself does not provide that the
17 fifteen-day period is jurisdictional. Nor would it make any sense for the fifteen-day period to be
18 jurisdictional especially when the matter was not even scheduled for decision by the Commission
19 until its open meeting on November 28 and 29, 2000.

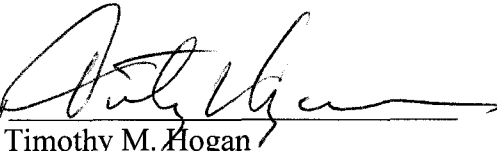
21 The only jurisdictional time limit with respect to Certificates of Environmental
22 Compatibility is contained in A.R.S. § 40-360.07(C). That section provides that any party may
23 request the Commission to reconsider its decision within 30 days after the decision is issued. A
24 jurisdictional time limit for the application for rehearing is necessary in order to give finality to
25

1 Commission decision. However, that is not the case with respect to requests for review of Siting
2 Committee decisions while the matter is still pending for consideration by the Commission.

3 For the foregoing reasons, the Center requests that the Commission accept the stipulation
4 that the parties have filed in which case the timeliness of the Request for Review will be a moot
5 issue. However, in the event the Commission fails to accept the stipulation, the Center requests
6 that Mesquite's Motion to Dismiss the Request for Review as untimely be denied.

7
8 RESPECTFULLY SUBMITTED this 16th day of November, 2000.

9 ARIZONA CENTER FOR LAW IN
10 THE PUBLIC INTEREST

11
12 By 
13 Timothy M. Hogan
14 202 E. McDowell Rd., Suite 153
Phoenix, Arizona 85004

15 ORIGINAL and 25 COPIES of
16 the foregoing filed this 16th day
of November, 2000, with:

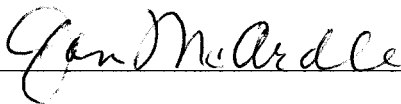
17 Docketing Supervisor
18 Docket Control
19 Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

20 COPIES of the foregoing
21 mailed this 16th day of
22 November, 2000 to:

23 Paul A. Bullis, Chairman
24 Office of the Attorney General
1275 W. Washington Street
Phoenix, Arizona 85007-2997
25

1 Janice M. Alward
2 Arizona Corporation Commission
3 Legal Division
4 1200 W. Washington
Phoenix, Arizona 85007-2927

5 Lawrence V. Robertson
6 Munger, Chadwick P.L.C.
7 222 North Wilmot Rd., #300
Tucson, AZ 85711

8 
9

10
11
12 C:\Center\Harquahala\Mesquite Power\Response to Motion to Dismiss.doc
13
14
15
16
17
18
19
20
21
22
23
24
25

1 MEMBER SUNDIE: Yes.

2 CHMN. BULLIS: Mr. Smith.

3 MEMBER WAYNE SMITH: Yes.

4 CHMN. BULLIS: Mr. Campbell.

5 MEMBER CAMPBELL: Yes.

6 CHMN. BULLIS: Mr. McGuire.

7 MEMBER MCGUIRE: Yes.

8 CHMN. BULLIS: Chair votes yes.

9 By a vote of seven yes, one pass, the motion
10 has passed and the certificate has been granted with
11 the amendments we've discussed. The certificate will
12 be prepared and signed first thing tomorrow morning
13 and transmitted to the Corporation Commission
14 tomorrow.

15 MR. ROBERTSON: Mr. Chairman, might I have
16 one second? On behalf of the applicant and myself, we
17 would like to extend our appreciation to you and all
18 the members of the Committee. It's been a long road
19 over different portions of three days, and we
20 appreciate your attention and your thoughtfulness
21 throughout. Thank you.

22 CHMN. BULLIS: Thank you very much. We are
23 done.

24 (The deliberations concluded at 4:39 p.m.)

25